91-355

Supreme Court, U.S.
FILED
AUG 13 1991
OFFICE OF THE CLERK

No.

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1990

ROBERT PHILIP MCNAMEE
BETSEY WARREN LEBBOS

Petitioners

vs.

STATE BAR "COURT"

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

ROBERT PHILIP MCNAMEE, ESQ.
c/o Betsey Warren Lebbos
P.O. Box 40
New Almaden, California
95042-0040
408-279-3100

Petitioner Attorney, Pro Se

BETSEY WARREN LEBBOS, ESQ.
c/o Betsey Warren Lebbos
P.O. Box 40
New Almaden, California

Petitioner (Federal) Attorney
Pro Se

QUESTIONS PRESENTED

1. Are sitting Justices in a State Supreme Court disqualified for financial and other disqualifying interest in licensing California attorneys when they do not recuse themselves and assign disinterested Justices to cases involving review of the acts of their private appointee alleged "judges" to an alleged state bar court of the California State Bar Association, when, in reviewing their appointees, they assist them in being paid their private salaries as private employees of the California State Bar Association by permitting their private appointees to impose their "Administrative Costs", meaning all reasonable expenses of the investigation, hearing, or review and a sum for the Client's Security Fund on attorneys their appointees adjudge guilty of infractions?

2. Is compelled active membership and compelled dues to the California State Association in order for attorneys in the state to be able to use their licenses to practice law from predecessor state supreme courts now a denial of first amendment freedoms of speech, belief, and association and as a denial of due process of law when their activities are political and ideological, based on adherence to a Communist philosophy, and where they assert they now license lawyers by changing their automatic membership from active to inactive in their trade group?

3. Are state statutes and Rules of Court permitting a private employee in the California State Bar Association to take the property and liberty of licensed lawyers unconstitutional for financial interest, conflict of interest, and as the unlawful delegation of judicial power to private persons?

4. Is not the California attorney licensing system unconstitutional as Laws impairing the Obligation of contracts of California attorneys?

5. Is not the California attorney licensing system where no judicial action or review is permitted prior to takings of careers of attorneys unconstitutional Bills of Attainder?

6. Is not the California attorney licensing system unconstitutional for financial interest in the California State Bar Association and in the sitting Justices to the California Supreme Court?

7. Do not the California State Bar association's improper media blitzes impairing fair hearings, its nondemocratic character, its financial taint, its political ideology, and multiple conflicts of interest require a declaration of unconstitutionality to its compelled membership, involvement in attorney matters, and public corporation claim?

8. Should not an independent Commission and special prosecutor be appointed to have presented and then heard the evidence of financial taint retroactive to January 1, 1986, in over two hundred California attorney admission and disciplinary cases when the evidence is that an impermissible financial interest was acquired by the private employees of the California State Bar Association on that date and in the sitting Justices to the California Supreme Court January 1, 1989?

LIST OF PARTIES

The parties in the Petition for a Writ of Certiorari are as follows :-

PETITIONERS

ROBERT PHILIP MCNAMEE, ESQ.
BETSEY WARREN LEBBOS, ESQ.
c/o Betsey Warren Lebbos
P.O. Box 40
New Almaden, Ca. 95042-0040

Lebbos and McNamee are Petitioner Attorneys in California Supreme Court docket no. S020774. *

Petitioner Lebbos is Petitioner in 278 Cal. Rptr. 845 (Cal. 1991) now pending a petition for a writ of certiorari with this Court.

(* Lebbos' address should be used for Petitioner McNamee due to his heart attack.)

COUNSEL FOR RESPONDENT

RICHARD HARKER, ESQ.
Department of Trial Counsel
State Bar of California
555 Franklin Street
San Francisco, Ca. 94102

Mr. Harker is Counsel for Respondent in *McNamee, et. al., v. State Bar "Court"*, No. S020774.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

LIST OF PARTIES iii

TABLE OF AUTHORITIES vi

OPINIONS BELOW 1

JURISDICTION 2

CONSTITUTIONAL PROVISIONS AT ISSUE 2

STATEMENT OF THE CASE 3

Summary of constitutional issues 3
Operative facts 4
The McNamee facts 10

ARGUMENT 15

I. IS THE INVOLUNTARY INACTIVE ENROLLMENT STATUTE AN UNCONSITUTIONAL BILL OF ATTAINDER 15

II. IS NOT THE INVOLUNTARY INACTIVE ENROLLMENT STATUTE A LAW IMPAIRING THE OBLIGATION OF CONTRACTS? 20

III. IS NOT THE INVOLUNTARY INACTIVE ENROLLMENT STATUTE UNCONSTITUTIONAL FOR FAILURE TO SPECIFY EXIGENT GROUNDS JUSTIFYING AN IMMEDIATE TAKING? 21

IV. DOES NOT THE STATE BAR COURT SYSTEM VIOLATE THE SHERMAN ANTITRUST? 22

V. IS NOT THE INVOLUNTARY INACTIVE ENROLLMENT STATUTE VOID FOR VAGUENESS AND OVERBREADTH? 22

VI. ARE NOT THE STATE BAR COURT AND INVOLUNTARY INACTIVE ENROLLMENT STATUTES UNCONSTITUTIONAL AS UNLAWFUL DELEGATION OF THE PUBLIC POWER TO CREATE A COURT TO PRIVATE PEOPLE AND OF JUDICIAL POWER TO PRIVATE PERSONS ? 23

VII. IS NOT THE CALIFORNIA ATTORNEY LICENSING SYSTEM UNCONSTITUTIONAL FOR FINANCIAL INTEREST AT EACH LEVEL, INCLUDING THE JUSTICES TO THE CALIFORNIA SUPREME COURT? 23

CONCLUSION 24

TABLE OF AUTHORITIES

CASES

Aetna Life Insurance Co. v. La Voie (1986), 475 U.S. 813 ..... i, 8, 23

Allied Structural Steel Company v. Spannous, 438 U.S. 234, 94 S.Ct. 2716, 57 L.Ed 727 (1978) 21

Conway v. State Bar (1989) 47 Cal. 3d. 1107, 255 Cal. Rptr. 390, 767 P. 2d. 657 1

Gershenfeld v. Justices of the Commonwealth of Pennsylvania (E.D., 1986) 641 F.Supp. 1419 21

Gibson v. Berryhill, 92 S. Ct. 2487, 408 U.S. 920, 33 L.Ed.2d 331,93 S.Ct.1689, 411 U.S.564 (1973) 23

In re: Malvin (D.C. App., 1983) 466 A.2d 1220 21

Keller v. State Bar (1990) 495 U.S.____, 110 L.Ed.2d. 1, 110 S. Ct.____, overruling 51,58, 767 P.2d.1020 (1989) 5, 16

Lebbos v. State Bar, 278 Cal. Rptr. 845 (1991) 1

Tumey v. Ohio 273 U.S. 510, 71 L.Ed. 749, 47 S.Ct. 437, 50 ALR 1243 (1927) 23

Ward v. Monroeville (1972), 409 U.S. 57, 93 S. Ct. 80, 34 L.Ed 2d. 267 23

UNITED STATES CONSTITUTION

Article 1, section 10, clause 1 2
Article 6, section 2 3
Amendment 1 3

Amendment 5 3
Amendment 14, section 1 3

UNITED STATES CODE

28 U.S.C., section 1257 1

CALIFORNIA BUSINESS AND PROFESSIONS CODE

Section 6007(c) 16, 22
Section 6079.1 15
Section 6084 15
Section 6086.5 23
Section 6086.65 15

No.

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1990

ROBERT PHILIP MCNAMEE & BETSEY WARREN LEBBOS

Petitioners

vs.

STATE BAR COURT

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

OPINIONS BELOW

The opinion of the sitting Justices of the California Supreme Court, addressing and rejecting Attorneys Lebbos and McNamee's constitutional challenges, is reported at *Lebbos v. State Bar,* 278 Cal. Rptr. 845 (1991). Their opinion rejecting the constitutional challenges to the Involuntary Inactive Enrollment statutes appears in *Conway v. State Bar,* 47 Cal. 3d 1107, 255 Cal. Rptr. 390, 767 P. 2d. 657 (1989).

There are no decisions issuing prior to the takings of attorneys' careers in the state. There have been none for over two years. The California Supreme Court just issues, "Petition denied" when their private appointees take careers. Their order, "Petition denied", permitting their private appointee to enroll Petitioner McNamee as an inactive member of the state bar is attached hereto at Appendix A. It issued May 15, 1991. Joint Petitioner Attorney Robert Philip McNamee, age 72, a practicing attorney for 42 years, suffered a near-fatal heart attack May 29, 1991. He has authorized his client, his joint petitioner, Attorney Betsey Warren Lebbos, to sign his name to this Joint Petition.

JURISDICTION

This Court has jurisdiction to issue the writ of certiorari under 28 U.S.C. §1257, because Petitioners raised and preserved, and the highest court specifically rejected, their constitutional claims in the companion case of *Lebbos v. State Bar, supra.*, and in *Conway v. State Bar, supra.*

Petitioner Attorney McNamee, Lebbos' federal attorney, was enrolled as an inactive member of the California State Bar, by an employee of the bar association May 6, 1991. On May 15, 1991, his appointing Justices denied McNamee and his client, Lebbos', Petition and Application for Stay of California Attorney Licensing System, requesting assignment of disinterested Justices and a declaration of unconstitutionality to the state's attorney licensing system due to, *inter alia,* financial interest in the sitting Justices to the California Supreme Court in the licensing of the state's 132,000 attorneys.

As in *Konigsberg v. State Bar* (1957) 353 U.S. 252, this Court has jurisdiction to review a denial of review by a state supreme court when there is a taking of property without due process of law by a person in a bar association. Pursuant to *Conway, supra,* there are no court orders prior to takings of California attorneys' use of their licenses by a private employee of the bar association indefinitely and for years by his action in enrolling an attorney as an inactive member of the compelled membership California State Bar Association.

The constitutional issues were first raised in the California Supreme Court on May 16, 1988 in *Lebbos v. State Bar, Ca. Supreme Court,* docket no. S005630.

CONSTITUTIONAL PROVISIONS AT ISSUE

Article I, § 10, cl. 1. No State shall...pass any bill of attainder...or Law impairing the Obligation of Contracts....

Article VI, § 2. This Constitution, and the laws of the United States which shall be made in pursuance thereof...shall be the supreme Law of the Land; and the judges in every state shall be bound thereby, any Thing in the Constitution or Laws of an State to the Contrary notwithstanding.

Amendment 1. Congress shall make no law...abridging the freedom of speech, or the right of the people to peaceably to assemble, and to petition the government for redress of grievances.

Amendment V. No person...shall be deprived of life, liberty, or property, without due process of law....

Amendment XIV, § 1. No state shall...deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Summary of constitutional issues

This Joint Petition is a companion to *Lebbos v. State Bar of California,* now pending with this Court. Although a Petition was submitted July 29, 1991, combining the two related cases with two other related cases under United States Supreme Court Rule 12.2, a Deputy Clerk refused to process it.

This Petition concerns the unconstitutionality of the California legal system due to financially interested licensing of its attorney Court Officers from January 1, 1986 on.

Petitioners, Attorney and Client, assert the State of California's existence as a State within the United States is no longer constitutional due to its lack of a third branch of government to enforce the Supremacy Clause, an independent and non-financially interested State Supreme Court, and that its financially interested, private attorney licensing system invali-

dates all attorney admissions, disbarments, suspensions and orders from January 1, 1986 on, as well as raising, by inference, the voidness of all judgments rendered in all state courts from that date forward as to all cases in which the state's defectively licensed attorneys either appeared therein or were removed from appearing therein.

References hereinafter to "§" or "§§" refers to sections of the California Business and Professions Code. References hereinafter to "Justices" hereinafter refers to the sitting Justices of the California Supreme Court.

Operative facts

Petitioner Attorney Robert Philip McNamee, age 72, is a practicing California attorney for forty two years. He has no disciplinary record, except one Public reproval. He is Lebbos' federal attorney.[1] Petitioner Betsey Warren Lebbos Lebbos is an attorney at law for twenty years, fifteen in the State of California. She has no client complaints, no prior disciplinary record, and no malpractice.

The California Constitution and state law permit the assignment of Court of Appeals' Justices to sit as a quorum and a forum in the California Supreme Court and also permit the transfer of any case, except death penalty cases, to any Court of Appeal. *Mosk v. Superior Court of Los Angeles*159 Cal. Rptr. 494, 601 P. 3d. 1030. (1979)

On February 27, 1989 Petitioner Attorney Betsey Warren Lebbos filed suit in federal court to declare the state statutes and rules permitting the twenty three member board of the California State Bar Association to create an asserted state bar and California's Involuntary Inactive statutes unconstitutional.

---

[1] On May 29, 1991 McNamee suffered a heart attack. He has undergone open heart surgery and a Quintuplet By-Pass. He is on medication. He and Lebbos being joint petitioners before the lower court, he has authorized his client, Lebbos, to sign his name for him.

The Justices of the California Supreme Court are named defendants. They were named for Declaratory and Injunctive Relief. They appeared throughout the proceedings. They urged the Federal Court to abstain. They did not disclose to the federal district court judge or Lebbos their financial and executive interest in the subject matter. *Lebbos v. Arguelles,* Ninth Circuit Court of Appeals, docket no. 89-15764.

On January 6, 1989 Lebbos had filed with the California Supreme Court for it to declare the state bar court statute unconstitutional. *Lebbos v. State Bar,* Ca. Supreme Court, docket no. SS005617. The Justices did not disclose their financial interest at any time nor assign any disinterested Justices. Three days later a compensated referee of the alleged state bar court recommended she be disbarred. Five weeks later another compensated referee of the alleged state bar court enrolled her as an inactive member of the bar under the Involuntary Inactive Enrollment statute. This was done without notice or hearing. *Lebbos v. State Bar,* Ca. Supreme Court, docket no. S009045. Seven days later, the California Supreme Court, on February 21,1989, upheld the constitutionality of the Involuntary Inactive Enrollment statutes and rules, *Conway, supra.* They did not disclose to Conway their financial and executive interests in the subject matter or in the party. Two days later, they issued a decision asserting the California State Bar Association was a governmental agency. *Keller v. State Bar, Keller v. State Bar,* 495 U.S___, 110 L. Ed. 2d. 1, 110 St. Ct., (1990) overruling 767 P. 2d. 1020 (1989). The latter claim was reversed by this court June 4, 1990. *Keller , supra.* They did not disclose to this Honorable Court or to the Keller plaintiffs their financial and executive interests in the subject matter or in the party, California State Bar Association.

Lebbos received the bar association's person's alleged *ex parte* order of inactive enrollment February 17, 1989, a Friday. Following the three day weekend, she appeared for four of her clients in court. She explained she had filed that morning with the California Supreme Court for a stay and declaration of unconstitutionality of the alleged order and that she still had

pending her January 6, 1989 Petition for them to declare the state bar court statutes unconstitutional. She was ordered removed as an attorney for her clients by the Superior Court judge. When the clients would not fire her, the judge dismissed all of their cases. The judge is one of the judges involved in *Lebbos v. Judges, Santa Clara Superior Court,* 883 F. 2d. 810 . (1989) concerning mail thefts and embezzlements by a Santa Clara Court-appointed Trustee to Lebbos.

The trustee is now imprisoned in the state penitentiary for embezzling funds. The judge is one of the defendant judges who complained to the state bar that their opponent in federal court should be disbarred as a California attorney for disqualifying them as that "inconvenienced the court", and required "special handling" of her cases. The fact their court appointed trustee stole her mail and embezzled her and her family's funds, however, did not affect that complaint. *Lebbos, supra,* p. 845-846. Lebbos' disqualification on her clients' cases, due to the pendency of the federal suit concerning their trustee's embezzlements, was "fraud, calumny, and deceit". *Lebbos v. State Bar, supra.* The judge charged Lebbos with contempt of court. He had an arrest warrant issued under the new statute claiming that it is crime to practice law if a person in the bar association enrolls an attorney as an inactive member of the state bar association. Section 6125, 6126(b). Lebbos has been convicted, and an appeal is pending.

On February 21, 1989 when Lebbos filed with the California Supreme Court for it to declare the Involuntary Inactive Enrollment statutes and rules and alleged order in her case unconstitutional, their decision in *Conway, supra,* which issued that same day, had not yet publicly been released. Her requested stay of the alleged order was denied February 23, 1989 as was her Petition to declare the state bar court statute unconstitutional. The Justices did not disclose their financial or executive interests in either the subject matter or in the party nor assign disinterested Justices. On February 27, 1989, Lebbos filed with the federal court for them to declare both the state bar court and involuntary inactive statutes unconstitutional as a denial of due process of law as taking of California

lawyers' licenses with no judicial process. *Lebbos v. Arguelles, Ninth Circuit Court of Appeals, docket no. 89-576.*

On January 1, 1989, the Justices acquired, by statutes, a power to appoint alleged "judges" to the alleged "state bar court", to sit at both the hearing and Review Department level of the alleged state bar court. §§6079.1, 6086.65. The appointees were to become employees of the California State Bar Association with their co-employee prosecutors. The nominees were selected by the same twenty three member board of the State Bar that hired and paid the private employee prosecutors who would appear before them. The Justices, then, would review their own appointees and suspend or disbar on their recommendation, and obtain administrative costs from each adjudged guilty lawyer to pay their private appointees' private salaries as private employees of the trade group and funds to finance the political lobbying and other political activities they had approved in *Keller, supra.* §§6084, 6086.10, 6140. By statute, when they denied review to each accused lawyer, the order of the Justices' private appointees in the alleged state bar court became the final order of suspension or disbarment or of alleged inactive membership of the lawyer. §§6084.

The Justices did not disclose to either Lebbos or to the federal district court judge they had privately agreed to appoint alleged judges to the alleged state bar court. By statute, they had the nominee list for such alleged judges before April 1, 1989. §§6079.1, 6086.65. On March 3, 1989 the requested TRO was denied by the Federal District Court Judge. On March 13, 1989 Lebbos filed a Petition for a Writ of Mandate to the Ninth Circuit Court of Appeals for their issuance of an order directing that the TRO issue. *Lebbos v.United States District Court of the Northern District of California v. Justices of the Supreme Court,* Ninth Circuit Court of Appeals, docket no. 89-70104. On April 17, 1989, Lebbos filed a second Petition with the California Supreme Court for them to declare the state statutes unconstitutional, on their face and as applied. *Lebbos v. State Bar,* Ca. Supreme Court, docket no. S009842. The Justices did not

disclose their financial or executive interests nor assign disinterested Justices.

At the hearing before the Federal District Court judge on April 28, 1989, the Justices' counsel did not disclose to the federal judge or Lebbos that the Justices had privately agreed to appoint alleged judges to the alleged state bar court. Instead, they represented to the federal district court judge that the federal court should not intervene as they themselves, would fairly decide the unconstitutionality of the asserted state bar court on Lebbos' pending second Petition filed April 17, 1989, while they had denied her first Petition two days earlier. *Lebbos v. Arguelles, supra.* Based on this representation, the federal district court judge dismissed the suit May 3, 1989.

The Justices then denied the second Petition May 17, 1989. They did not disclose their financial and executive interests in the matter nor assign disinterested Justices. On June 1, 1989 Chief Justice Lucas issued a press release announcing the California Supreme Court was appointing nine alleged judges to the alleged State Bar Court and announced their nine appointees who were to be the nine alleged judges to the alleged state bar court. On June 2, 1989, Lebbos filed her appeal from the dismissal to the Ninth Circuit Court of Appeals. *Lebbos v. Arguelles, supra.*

A critical issue is the sitting Justices' personal liability to Lebbos and the other over one hundred attorneys whose careers were taken without due process of law, through their non-disclosure, non-assignment of disinterested Justices, non-waivers, for over two years while they denied every one of the over one hundred and seven petitions California attorneys filed challenging the constitutionality of the system the Justices had personally created through their non-judicial acts, and when in so doing they knew they were violating *Aetna Life Insurance Company v. LaVoie,* 475 U.S. 813 (1986) requiring State Supreme Court Justices' recusal from cases in which they had a financial or other conflict of interest, and California Judicial Code of Conduct Canon 3(C) and

(D) requiring a written waiver from a party of a judge's financial interest prior to his sitting in a judicial capacity and wherein financial interest is defined to include a judge who has a relationship with a person as "advisor or active participant in the affairs of a party".

The day after Lebbos filed and served her brief on the related case in the Ninth Circuit, and one week before her opening brief was due in the Ninth Circuit concerning the sitting Justices' non-disclosure to the federal court judge in 1989 and their personal liability, the sitting Justices disbarred, as a California attorney, their opponent to it, having refused to assign disinterested Justices. They did so by denying her Petition for Rehearing. *Lebbos v. State Bar,* United States Supreme Court, docket no. now pending. The day the Justices were served with Lebbos' Opening brief to the Ninth Circuit, which brief contained the Justices' letters and phone call to Lebbos with their veiled threats to disbar her if she disclosed their financial interest, May 15, 1991, they denied her and her federal attorney's Joint Petition and Application for Stay of California Attorney Licensing System filed May 1, 1991. See Excerpts to Appellant's Opening Brief with Justices' two letters telling Lebbos not to argue the unconstitutionality of the 1988 amendments in her disbarment case. Those 1988 amendments are the ones giving the Justices their financial interest in all attorney cases. *Lebbos v. State Bar, Ninth Circuit Court of Appeals, docket no. 89-15170.; McNamee et. al. v. State Bar Court,* California Supreme Court, docket no. S020774.

By the denial of the McNamee and Lebbos Petition and Stay, with their refusal to assign disinterested Justices to hear the unconstitutionality of California's attorney licensing system due to, *inter alia,* the Justices' financial and executive interests in said licensing for their private appointees, Petitioner Attorney McNamee was permitted to be enrolled by one of the Justices' appointee alleged "judges" to the alleged state bar court as an inactive member of the state bar, thereby, permitting his 42-year unblemished career as an attorney to be taken with no due process of law. Two weeks later, he suffered a near-fatal heart attack. Refer footnote 1.

The state bar's diversion of discipline funds to political projects resulting in a 13 million dollar deficit wherein large administrative costs awards must be assessed by finding lawyers guilty in order to pay for their alleged state bar court and the Justices' appointees' private salaries is set forth in the *Amicus Curiae* brief of Attorney Ronald A. Clark, # S011535, filed 25, 1990. This financial interest is uncontested by the state bar.

The McNamee facts

The Justices' appointee alleged "judge" of the alleged state bar court of the California State Bar Association, Mr. Alan Goldhammer, assumed jurisdiction to try the merits of a pending legal malpractice suit against Lebbos' federal attorney, McNamee. That suit is pending a jury trial in a constitutional court of law. Mr. Goldhammer is a private employee of a private trade group. Under Article 6, sections 1 and 9 of the California Constitution, he is a private employee of a corporation, not a court. He is not a judge of any court, as claimed, as the alleged state bar court is constitutionally nonexistent, since the Constitution orders the state bar to be a corporation and not a court. It is not empowered to hear the merits of pending civil lawsuits.

However, Mr. Goldhammer assumed jurisdiction to try the civil suit as a disciplinary matter. As such, he sought to and did, unless this Petition is granted, abort the constitutional court of law's subject matter jurisdiction for his own personal profit and gain in order to obtain funds to pay himself his private salary and sought to interfere with the constitutional courts of law by enrolling McNamee as an inactive member of his employer, the state bar, so as to impair McNamee's ability to defend the legal malpractice suit by taking his career first.

The plaintiff in that suit contended that McNamee was her attorney and advised her to invest in a particular investment, which investment failed, causing her to lose $ 47,000. McNamee claims that he was not her attorney at the time, that he last represented her over ten years prior thereto, and that,

when she came into funds to invest, he gratuitously offered investment advice. He claimed that he had also invested in the same investment and lost over $70,000 of his own money.

Mr. Goldhammer is not empowered to try pending civil cases. He is a private employee of a private trade group. His private co-employee is the prosecutor appearing before him. Both are paid their private salaries as private employees of the California State Bar Association out of conmingled compelled private dues from 132,000 California attorneys and the "administrative costs " they impose on finding attorneys guilty or which they coerce attorneys into paying them in exchange for "stipulated" punishment. §6086.10. Thus, state bar rule of procedure 464 provides the " incentive for the state bar to bring frivolous charges, in order to obtain cash to obtain their salaries. It provides that prior to the commencement of trial in a formal hearing, the Chief Trial Counsel may relieve a member, in part or in whole, from the obligation to pay the costs of disciplinary proceedings, or may enter into an agreement extending the time to pay those costs, if the member enters into a stipulation as to facts and discipline. If a District Attorney could just have a defendant agree to pay him his salary, in exchange for stipulated punishment, our real courts would collapse from corruption." Refer *Amicus Curiae* brief of Attorney Ronald A. Clark, pages 31-32, *Lebbos v. State Bar,* California Supreme Court, docket no. S011535.

The "costs" are not statutory costs. They are in addition to statutory costs. They are the "administrative costs". These include the reasonable expenses of investigation, review, and hearing and a sum for the Clients Security Fund. Thus, the state bar's alleged "court" employees impose their private salaries, benefits, perks, retirement plans, paper clips by finding all attorneys guilty of everything. This must be done, as the state bar moved twenty million dollars out of discipline into political lobbying projects and other private activities. This created a thirteen million dollar deficit, of which 9.5 million is attributable to the alleged state bar court. This deficit may only be made up by finding all attorneys guilty and imposing 9.5 million dollars in "administrative costs" on the ad-

judged guilty lawyer in order to pay the Justices' alleged "judges" their private salaries. By statute, the Justices' alleged "judges'" private salaries must be paid at the going rate for salaries of municipal court judges, except the alleged Presiding Judge is paid at a Superior Court Judge rate. §§6086.10, 6086. 65, 6079.1. With benefits, this is over a million dollars a year. for nine employees. Refer *Amicus Curiae* brief of Attorney Ronald A. Clark, *supra.*

Since the state bar is exempt from state law under §6002 and the Freedom of Information Act as a private trade group, their budget is private, unaudited, with no C.P.A. certifying authenticity or approving accounting practices statements to the limited financial information they issue. However, it is clear seven people, including their lobbyist, pay themselves higher salaries than those of state supreme court associate Justices. Thus, the seven receive over a million dollars a year. The compelled attorney members have no rights to protest the high salaries they are forced to finance and no rights to object. The bar association's employees are the highest paid of any bar association in the United States. California attorneys are forced to pay the highest bar association dues in the United States, averaging $500 per lawyer per year for each of the 132,000 lawyers. They have no say in how their money is spent. As herein described, the compelled members have no rights to vote. The only benefit they receive is a thirty page monthly magazine. All of the other state bar services, including pamphlets must be separately paid for, including the charges for the alleged state bar court's services.

Thus, transcripts may not be ordered from a certified reporter at the going rate. They must be ordered from the alleged state bar court and paid to it at double the going rate or else the transcript may not be obtained. Refer Exhibits E and F to Exhibits to Joint Petition filed May 1, 1991. *McNamee, et. al. v. State Bar "Court", supra.* Tapes of proceedings cost $15.00 per cassette and must be paid to the alleged state bar court. Petitioners assert that the alleged state bar court of the California State Bar Association is a non-exempt private trade group small group, akin to a peer group, that is a "combination

and conspiracy in restraint of trade", to which the Parker doctrine does not apply as its lawyer-fixing is not state policy, not by direction of the state, but of individual discretion, and unsupervised and unmonitored by the State.

They submit the above horizontal tying agreements of the alleged state bar court forcing accused attorneys to pay more than the going rate and forcing them to contract with it in order to obtain necessary products in order to defend one's license to practice law are separate violations of the Sherman Anti-Trust Act. Since attorneys already paid, with their compelled dues, for an advisory attorney system, which has been abolished in fact, forcing them to pay twice due to the board diverting millions of dollars to high salaries, heavy political lobbying, an expensive Press Department, and political projects and public relations, emphasizes the need to declare the California State Bar Association's compelled membership and role in attorney matters unconstitutional as the Association's board is running a private, for personal profit attorney disciplinary claimed "court" without vote of any compelled member.

Further, it is clear that their salary/compelled dues income ratio is abnormally high. There are many featherbedding positions available for friends of the state bar, such as friends of the legislature. A position for a Bindery Clerk is an $18,000 position. Each department is top heavy with many highly paid Chiefs and few Indians. This factual information gleaned from the state bar's financial statements and employee records is unrefuted by the state bar. Refer *Amicus Curiae* brief of Ronald A. Clark, *supra*.

Thus, Mr. Goldhammer credited the suing plaintiff's version of events after a two day hearing, claimed the failed investment was a "$47,000 misappropriation of client funds", recommended McNamee's disbarment, and ordered the clerk to assess the "administrative costs" against McNamee. Then he asserted he would review his own recommendation, and sit in a second proceeding to enroll McNamee as an inactive member of the bar by adopting his own recommendation and finding it constituted conduct posing a substantial threat of harm, thereby

in thirty days, taking McNamee's 42-year clean career and preventing McNamee from continuing to be Lebbos' attorney and preventing his having a jury trial in the constitutional court of law on the merits of the claims. Thus, not only do the sitting Justices in the California Supreme Court review their own appointees' recommendation, their private appointees review themselves and effectively take careers with no judicial review available. No legal, constitutional, or factual issues are permitted to be heard prior to the taking.

On May 1, 1991 McNamee and Lebbos filed their Joint Stay and Petition to stay the California attorney licensing system asserting that the stay and Petition should be referred to a disinterested panel of Justices, that the sitting Justices were disqualified from hearing their Petition due to financial, personal, and political interest, and the factors set forth in *Aetna, supra,* of a) pending similar litigation involving them, b) the binding effect of their decision-making, c) the fact the law is unsettled on the issues, d) that each was casting a deciding vote, e) that they were not merely following well-settled law, f) by deciding against the petitioners, they were raising the stakes in their personal favor in the federal litigation involving themselves.

The Petition sets forth the California attorney licensing system is unconstitutional due to their financial and other interest, and in each layer involved, and that the statutory complex are unconstitutional bills of attainder, laws impairing the obligation of contracts, a denial of both substantive and procedural due process of law, a denial of "One Person, One Vote", takings with no due process of law, as well as in direct violation of the California Constitution.

On May 6, 1991 Mr. Goldhammer enrolled McNamee as an inactive member of the state bar. His alleged "order" is set forth at Appendix B. On May 15, 1991 Associate Justice Armand Arabian issued an order "Petition denied." This appears at Appendix A. On May 29, 1991 McNamee suffered a near-fatal heart attack.

ARGUMENT

I. IS THE INVOLUNTARY INACTIVE ENROLLMENT STATUTE AN UNCONSITUTIONAL BILL OF ATTAINDER

The question is whether California's Involuntary Inactive Enrollment statute is an unconstitutional Bill of Attainder as takings by legislative fiat with no rights to a judicial trial. The California Supreme Courts' validation of the same in *Conway, supra,* occurred while the sitting Justices had acquired seven weeks earlier a financial interest in the state bar, the prosecutor, in such cases. §§6079.1, 6086.65, 6084. There is no mention of the Bill of Attainder issue that is here presented.

However, in dealing with the lack of any judicial action or review to the attorney prior to the taking of his career through a referee of the state bar enrolling an attorney as an inactive member of the state bar when state law requires active membership in order to practice law, the lower Court dealt with the issue as one of unlawful delegation of judicial authority. It then held that if they chose to permit a person in the state bar association to first enter the order, that this was constitutional as it did not infringe upon their judicial prerogatives. *Conway,Supra.*

The question then is whether the prohibition on Bills of Attainder where a certain, identifiable class of persons are targeted for takings without rights to a judicial trial, where the legislature takes by operation of statute, and abolishes the rights to a judicial trial, applies to invalidate the Involuntary Inactive Enrollment statute in each particular. Mr. Goldhammer even admits he had no hearing. Appendix B-1. "No request for hearing was filed and inasmuch as the State bar waived hearing, no formal hearing was held and the matter is determined on the pleadings and documents of record." Thus, even the bar association employee admits there is not even a semblance of any lawful proceeding.

Second, the statute has a rebuttable presumption. However, when the state bar employee waives a hearing, it may not be rebutted. It becomes a conclusive presumption. He thus stated:

> "Busn. and Prof. §6007(c)(4) provides a rebuttable presumption following a decision recommending disbarment (finding 3) that the attorney has caused substantial harm to the clients or the public, that the public is likely to suffer greater injury from the denial of the involuntary inactive enrollment than respondent is likely to suffer if it is granted, that there is a a reasonable likelihood that the harm respondent has caused will reoccur, and that there is a reasonable probability that the State Bar will prevails on the merits of the underlying matter." Appendix B.

Petitioners assert that the rebuttable presumption is unconstitutional as it denies the rights to a judicial trial and the rights to have the merits determined by a competent and disinterested constitutionally empowered judge of a constitutional court of law, and not by a financially interested private employee of a private trade group. The private employee , in fact, has no proceeding as he is merely affirming himself and pretending he is not reviewing himself.

He is taking his constitutionally limited advisory rule that was described in *Keller v. State Bar of California*, 495 U.S. __, 110 L. Ed. 2d., 1, 110 S. Ct., overruling 767 P. 2d. 1020 (1989) and turning a recommendation into a judicial order without a judicial trial. The taking precedes the judicial trial.

Petitioners assert that each aspect of the Involuntary Inactive statute is separately unconstitutional as a Bill of Attainder. They contend that, first, there is no hearing at all unless the

accused requests the hearing that is noticed take place.This shifts the burden to provide a trial from the disciplinary system providing it to the accused having to request it or none takes place, even *pro forma*. Second, is it not true that the issue is not, as the Justices claimed in *Conway , supra,* whether the judiciary's prerogatives are being invaded, but rather the rights of the accused? Third, if a presumption attaches to a recommendation, then it is no longer a recommendation. It has the force it is constitutionally not permitted to have of more than a recommendation. It is a vehicle to prevent a judicial proceeding on whether an immediate and summary suspension should be issued, but without witnesses, examinations, confrontation, impartial adjudicators, and reasoned evidence. Fourth, the presumptions are so irrational that their substitution for a judicial trial means none takes place.

The first presumption is that harm to the public or to clients has taken place from a recommendation of disbarment. With financially interested private employees not wanting to have their jobs taken from them, anyone who raises any constitutional issues is automatically recommended to be disbarred in every case. There is no relationship between the recommendation and the facts or the law as these private employees of a trade group are not mentally or legally competent to determine any facts or law. Their recommendations issue out of private financial and self-interest. They want money from the accused to pay their own salaries. The harsher the recommendation, the more coercion is placed on the lawyer to buy his way out and give them large sums of cash. As a result, all of their claimed facts are invalid as they make them to get cash. All their claimed law is not in point as it is cited to get cash for themselves. And all of the recommendations are harsher than any competent or impartial person would make as they are made to frighten the attorney into turning over large sums of cash to them, so they and their private co-employee prosecutors and investigators and staff are paid their private salaries. Further, many proceedings have no client complaints, such as Lebbos. The complainants are opposing lawyers in on-going cases or judges disqualified for cause. In sum, they are private opponents to the lawyer. Thus, a presumption of substantial

harm to clients or the Public from a recommendation presupposes the recommendation is valid and based on fact. It further presupposes that whoever the private employee thinks is his personal "Public" is indeed the same Public the legal profession is supposed to be protecting, and not, as in McNamee, a disgruntled former client who lost monies in a bad investment and wants to scapegoat her former lawyer and skip the niceties of a jury trial where all of the facts are decided by a twelve person independent jury and based on competent rules of evidence, jury instructions and legal issues being decided by a real judge.

The second result of the recommendation is a presumption that the Public is likely to suffer greater injury from the denial of the involuntary inactive enrollment than respondent is likely to suffer if it is granted. Concepts of Due Process require specificity and not vagueness in statutes, yet there appears to be a point where the combined vagueness and overbreadth are so great that no trial could take place as no one could possibly comprehend how to address the statute. Here there is an unworkable and incomprehensible presumption. It is also nonsensical. If the attorney's misconduct poses grounds for an immediate and emergency suspension, the harm to him is irrelevant. A comparison of his harm and the public's harm is not appropriate. But if the grounds are non-existent for such a severe sanction, than such suspension may not issue no matter what kind of harm is likely to be suffered by the "Public". The statute does not address what is "likely"? Many things are likely, but how does one predict the future and take careers now on suppositions about what is likely to happen?

The third result of the recommendation is a presumption that there is a reasonable likelihood that the harm will reoccur. This is the crystal ball gazing aspect to the statute, where a rebuttable presumption is , in fact, a conclusive one, as there is no one to rebut it as it is impossible to put on any evidence or proof, because the standard is so impossible. There is no hearing of any kind, because the presumptions deny any. The presumptions are impossible to address in any meaningful manner and do not relate to the grounds that are the predicate

to an emergency suspension. The grounds are ignored and eaten up with presumptions so that no legal proceeding takes place.

Mr. Goldhammer's assertion that the likelihood of reoccurrence is shown by a competitor attorney and his secretary's affidavits claiming that a client they took over from Mr. McNamee was not serviced is the kind of non-existent and non-credible claims that competitors and opponents make for business profit, and which, because of the competitive factor, are entitled to no weight. Appendix B. Even then, is the handling of this one transfer of a case a "likelihood of reoccurrence"? What about all of his other clients and cases ? What about his forty two year impeccable career? And since he was not charged with abandonment of a client, is there sub-trials supposed to be going on at the same time, but without confrontation, trial, evidence, cross-examination?

The fourth result of the recommendation is that "There is a reasonable probability that the State Bar will prevail on the merits of the underlying disciplinary matter." If reasonable probabilities of later prevailing are the basis for an immediate taking now, then, of course, there is no trial. The taking is not based on a trial. It is based on speculation as to future results before the trial takes place. It also is self-serving, as the employee decides that he himself is going to prevail in the end in advance of their needing to be that determination. As herein described, is not such a presumption an invalid prior restraint?

The net result of the taking by a private employee of a bar association is that certain opponents and competitors are preferred against other competing attorneys not so preferred. Certain people may try their pending civil trials in the alleged state bar court, while others have their rights to trial in a real court of law. Takings are on Totem Pole Hearsay and incompetent, non-admittable evidence, as the affidavit of a competing attorney, Eugene Mascoli, indicates where he is claiming things occurred to Mr. Lee of which he could not possibly have any personal knowledge, yet Mr. Goldhammer asserts he is relying on that attorney's affidavit in making his alleged order.

And when he premises his alleged order on the alleged gravity of the misconduct he says is "found in the decision", when this is his own self-serving alleged findings, and he makes and can make no decision about professional misconduct as his role is strictly recommendatory only, one can readily see that these takings of career are on hot air, out of financial self-interest, to get cash, and with no trial.

Is not this statute an unconstitutional Bill of Attainder as targeting California attorneys to have their use of their licenses taken by legislative fiat since they are done by a private employee of a bar association, with no hearing, no trial, on non-existent standards, without competent evidence and no competent court of law?

II. IS NOT THE INVOLUNTARY INACTIVE ENROLLMENT STATUTE A LAW IMPAIRING THE OBLIGATION OF CONTRACTS?

Petitioner Lebbos, as the client of McNamee, filed as Joint Petitioner with him as her contract with her attorney was being abrogated by a private employee of a bar association when she posited that her contract with her lawyer may not be interfered with or abrogated by a claim her lawyer's license was shifted from the Judicial branch to the Legislative branch, and from it to a private trade group person, as she has reasonably relied on over five centuries of law that provides her attorney would be available to complete his contract unless he was suspended or disbarred by his admitting court composed of non-interested Justices and only for provable professional misconduct determined after due process of law. A financially interested private employee of a trade group taking her contract with her lawyer and his services from her, she asserts, because the private employee wants to try a pending civil case instead of letting a jury decide that case, is not and can not be deemed a suspension after any due process of law.

Is not the Involuntary Inactive Enrollment statute unconstitutional as a law impairing the obligation of her

lawyer's contract with her, which, as in *Trustees of Dartmouth College v. Woodward,* 17 U.S. 518, 4 L. Ed. 629, involves a non-grantor branch of government trying to take contracts that are granted by another branch? Does it matter whether the licensing branch wants to allow the legislative branch to take over their contracts of licensing with their Court Officers? Since the attorney was a party to this contract, is it not his reasonable reliance interest that is to be protected as well as that of his clients and not the interests of convenience of the sitting Justices to the present California Supreme Court? Is not McNamee's contract of licensing with his predecessor State Supreme Court he entered into 42 years ago that had an express term in it that he was to be licensed by a State Supreme Court and would not be deprived of either his own contract of licensing or his contracts with his client without the judgment of his contracting admitting Court for good and sufficient grounds and only after procedural and substantive due process of law to be treated as a binding contract on the present Justices of the California Supreme Court? When the factors set forth of *Allied Structural Steel Co. v. Spannous,* 438 U.S. 234, 98 S.Ct. 2716, 57 L.Ed. 2d. 727 (1978) do not justify a due process claim that licensing by a private person in a trade group is for the Public welfare, morals, or welfare, should this not be found to be a law impairing the obligation of the attorney's contract?

III. IS NOT THE INVOLUNTARY INACTIVE ENROLLMENT STATUTE UNCONSTITUTIONAL FOR FAILURE TO SPECIFY EXIGENT GROUNDS JUSTIFYING AN IMMEDIATE TAKING?

Both *In re: Malvin* (D.C. App. 1983) 466 A. 2d. 1220 and *Gershenfeld v. Justices of the Supreme Court of the State of Pennsylvania* (E.D. Pa. 1986) 641 F. Supp. 1419, make clear that no taking of an attorney's license may occur without procedural and substantive due process of law given to the attorney prior to the taking, and only immediate, substantial and

imminent great harm authorizes any temporary suspension, and then only by the licensing court.

Is not the Involuntary Inactive Enrollment statute unconstitutional for failure to require such exigent circumstances and for failure to provide for a competent court of law so acting?

Is not the Involuntary Inactive Enrollment statute unconstitutional as the Unlawful Delegation of Judicial Power to private persons?

IV. DOES NOT THE STATE BAR COURT SYSTEM VIOLATE THE SHERMAN ANTI-TRUST ?

The question presented is whether the private State Bar Court system violates the Sherman Anti-Trust Act as the takings as above-described are by private opponents and competitors in a trade group that is not really a Court. It is not created through the sovereign power of the People. It is not publicly-funded, run, managed or accountable. The sitting Justices to the California Supreme Court, as participants in the affairs of a party, to wit, the state bar, are not acting with the sovereign power of the State as they conduct no judicial review. They have denied all review to each Petition and stay since they appointed their alleged judges to the alleged state bar court. The takings are by discretion, and not by direction of the State. The takings are before any claimed judicial review. Because of the financial interest in the State Supreme Court Justices, there is no state supervision, monitoring or accountability.

V. IS NOT THE INVOLUNTARY INACTIVE ENROLLMENT STATUTE VOID FOR VAGUENESS AND OVERBREADTH?

When the standard of the taking of a career is "conduct posing a a substantial threat of harm to the interests of the Public or clients", as provided in §6007(c), is not the statute unconstitutional as the standard is both vague and overly broad and gives no accused attorney fair notice of the proscribed conduct?

VI. ARE NOT THE STATE BAR COURT AND INVOLUNTARY INACTIVE ENROLLMENT STATUTES UNCONSTITUTIONAL AS UNLAWFUL DELEGATION OF THE PUBLIC POWER TO CREATE A COURT TO PRIVATE PEOPLE AND OF JUDICIAL POWER TO PRIVATE PERSONS ?

Is not the California attorney licensing system repugnant to the United States Constitution as both the unlawful delegation of public power to create a court and the unlawful delegation of judicial power to private persons?

VII. IS NOT THE CALIFORNIA ATTORNEY LICENSING SYSTEM UNCONSTITUTIONAL FOR FINANCIAL INTEREST AT EACH LEVEL, INCLUDING THE JUSTICES TO THE CALIFORNIA SUPREME COURT?

With each layer of the attorney licensing system having a financial interest in obtaining administrative costs to pay their private salaries by ensuring the accused is found guilty, including the sitting Justices in the California Supreme Court as those funds are used to pay their private appointees' private salaries, do not the decisions in this Court in *Aetna Life Insurance Company v. La Voie*,475 U.S. 813, *Gibson v. Berryhill*, 92 S. Ct. 2487, 408 U.S. 920,33 L.Ed.2d 331,93 S.Ct.1689, 411 U.S.564 (1973); *Tumey v. Ohio* 273 U.S. 510, 71 L.Ed. 749, 47 S.Ct. 437, 50 ALR 1243 (1927); *Ward v. Monroeville* (1972), 409 U.S. 57, 93 S. Ct. 80, 34 L.Ed 2d. 267, compel a finding of unconstitutionality to the state bar court system, the co-employee investigator, prosecutor and alleged judge financial and self-interests against an accused, and finally the financial and executive and personal conflicting interests of the sitting Justices to the California Supreme Court?

CONCLUSION

Petitioners submit a finding of unconstitutionality to the compelled membership in the state bar, to its public corporation and governmental claim, to its state bar court claim, and its claim to speaking for any compelled attorney member or for, "the administration of Justice", must be made in addition to declaring its role in discipline under the State Bar Act unconstitutional. It is clear from the record below it has compromised and impaired the integrity of the law by enveigling the sitting Justices into a serious financial scandal and cast disrepute and disrespect on the legal profession and on the state's Judiciary and it has done so for personal, financial gain for select private persons.

For the foregoing, the Petitioners respectfully urge that a Writ of Certiorari issue.

RESPECTFULLY SUBMITTED,

Robert Philip McNamee

ROBERT PHILIP McNAMEE, ESQ. (Pro Se)

Betsey Warren Lebbos

BETSEY WARREN LEBBOS, ESQ. (Pro se)
P.O. Box 40
New Almaden, Ca. 95042-0040
408-279-3100

Petitioner Attorneys (Pro Se)

Appendix Table of Contents

McNamee, et al. v. State Bar, docket no. S020774,
ORDER DENYING PETITION,
May 15, 1991 ..... A

Decision Granting Application for Inactive
Enrollment..... B

No. S020774

IN THE SUPREME COURT OF CALIFORNIA

IN BANK

SUPREME COURT
FILED: May 15 1991

ROBERT PHILLIP MCNAMEE, et. al.,

Petitioners

v.

THE STATE BAR COURT OF THE STATE BAR OF CALIFORNIA

Respondent

Petition DENIED.

Arabian
Acting Chief Justice

Appendix A

STATE BAR COURT
STATE BAR OF CALIFORNIA
HEARING DEPARTMENT—SAN FRANCISCO

FILED: May 6, 1991

In the Matter	)	
	)	Case No. 91-TE-01376-AKG
ROBERT P. MCNAMEE	)	
No. 20809	)	DECISION GRANTING
	)	APPLICATION FOR
A member of the State Bar	)	INVOLUNTARY
	)	ENROLLMENT
	)	[Bus. & Prof. Code §6007(c)]
	)	

On March 26, 1991, Donald R. Steedman, examiner for the State Bar of California, filed an Application for Involuntary Inactive Enrollment under §6007(c) of the California Business and Professions Code requesting this Court order ROBERT P. MCNAMEE, respondent ("respondent"), involuntarily enrolled as an inactive member of the State Bar due to his allegedly being a substantial threat of harm to the interests of his clients and to the public.

A request for extension of time to file a response or for hearing had been filed on April 11, 1991 by Tom Low who had been attorney for respondent ion the underlying proceeding (Case No. 88-0-13109) which request was denied on April 17, 1991 without prejudice because Mr. Low was not able to represent that he was counsel for respondent or even that he knew respondent's position as to whether respondent wished a hearing in this matter. No request for hearing was filed and inasmuch as the State Bar waived hearing, no formal hearing was held and the matter is determined on the pleadings and documents of record.

After having carefully considered all of the documents of record, and the arguments of counsel, the Court makes the

findings of fact and conclusions of law that follow, and grants the application for involuntary enrollment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On March 26, 1991 respondent was properly served with the Application for Involuntary Enrollment pursuant to Rule 791 of the State Bar's Transitional Rules of Procedure.

2. Applicant never requested that the hearing set for May 2, 1991 as to the application for Involuntary Enrollment be held.

3. A recommendation of disbarment was made In the Matter of Robert P. McNamee, Case No. 88-0-13109-AKG that the State Bar would seek involuntary enrollment.

4. Respondent had been duly notified in the Notice to Show Cause in Case No. 88-0-13109-AKG that the State Bar would seek involuntary enrollment.

5. Respondent's conduct poses a substantial threat of harm to his clients.

6. Respondent's conduct has caused a substantial threat of harm to the public.

7. The public is likely to suffer greater injury from the denial of the involuntary inactive enrollment than respondent is likely to suffer if it is granted.

8. There is a reasonable likelihood that the harm respondent has caused will reoccur.

9. There is a reasonable probability that the State Bar will prevail on the merits of the underlying disciplinary matter.

DISCUSSION OF FINDINGS AND CONCLUSIONS

Bus. & Prof. §6007(c)(4) provides a rebuttable presumption following a decision which recommends disbarment (finding 3) that the attorney has caused substantial harm to the clients or the public, that the public is likely to suffer greater injury from the denial of the involuntary inactive enrollment than respondent is likely to suffer if it is granted, that there is a reasonable likelihood that the harm respondent has caused will reoccur, and that there is a reasonable probability that the State Bar will prevail on the merits of the underlying disciplinary matter.

Findings 3 through 7 are primarily based on the presumption created by Bus. & Prof. §6007(c)(4) which affects the burden of proof as defined in §605 of the Evidence Code. The threat to clients is shown primarily by the gravity of the misconduct found in the decision in Case No. 88-0-13109-AKG but the likelihood of recurrence is also shown by the declaration of Phong Le, a recent client of respondent, and supporting declarations of Eugene Mascoli, attorney for Mr. Le, and Vicki Canales, secretary for Eugene Mascoli, that respondent had recently failed to perform services for Mr. Le, failed to communicate with Mr. Le, and had withdrawn from employment without taking reasonable steps to avoid prejudice to Mr. Le (no return of Mr. Le's file and papers despite repeated demands for these).

DECISION AND ORDERS

Pursuant to Business and Professions Code §6007(c), respondent, Robert P. McNamee, is ordered immediately enrolled involuntarily as an inactive member of the State Bar of California pending further order of this Court or the Supreme Court of California.

It is hereby directed that notice of this Order shall be given respondent pursuant to rule 797 of the State Bar of California's Transitional Rules of Procedure.

Respondent is further ordered to comply with the duties of an involuntarily enrolled inactive attorney as enumerated in rule 795.5 of the State Bar of California's Transitional Rules of Procedure.

DATED: May 2, 1991.

ALAN K. GOLDHAMMER
JUDGE OF THE
STATE BAR COURT